No. 82-745

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term 1982

GREYHOUND RENT-A-CAR, INC.,
Petitioner,

v.

The CITY OF PENSACOLA, and DOLLAR RENT-A-CAR SYSTEM, INC.,
Respondents.

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF OF PETITIONER IN SUPPORT

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REPLY OF PETITIONER GREYHOUND IN SUPPORT

Contrary to the Argument of the Respondent City of Pensacola, the holding of the Court of Appeals directly raises as a *matter of law* the Questions Presented as stated in the Petition. Greyhound's appeal to the Eleventh Circuit was based upon erroneous jury instruction

concerning the antitrust laws[1] under which the jury returned a general verdict for the defendents City of Pensacola and Dollar Rent-A-Car System. Unless such defendants were entitled to a directed verdict as a matter of law on the antitrust charge, an erroneous jury instruction would require a reversal and remand for a new trial with proper instructions. The Court of Appeals *expressly* ruled it was unnecessary to consider the errors in the general antitrust instruction, because there was no Section 1 agreement as a matter of law.

> "We affirm the entry of judgment against Greyhound because we conclude there was insufficient evidence to establish any contract, combination, or conspiracy between Dollar and the City within the meaning of § 1 of the Sherman Act. Greyhound having failed to prove the first element of its § 1 claim, we need not therefore address the challenges it presents to the jury instructions and to the admission and exclusion of evidence unrelated to the issue of agreement." (676 F.2d at 1303).

Because the opinion of the Eleventh Circuit holds as a matter of law the indemnity agreement could not be sufficient evidence of a Section 1 Sherman agreement, the effect of that decision is that not even a properly instructed jury could have found for Greyhound.

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[1]Greyhound asserted the general antitrust instruction given was erroneous upon two alternative grounds: First, that the Court erred in giving a Rule of Reason rather than a per se instruction and second, if a per se instruction was not warranted, that the instruction given by the Court incorrectly defined the law concerning the Rule of Reason.

The Court of Appeals expressly discussed the indemnity agreement which was argued by Petitioner-Greyhound. The Court's holding in rejecting Petitioner Greyhound's contentions raised the stated questions presented. 676 F2d at 1382-1384.

If the City of Pensacola is contending that the indemnity agreement was not raised in the evidentiary record, then this too is contrary to the acknowledged facts. In addition to the record references noted in the Petition and the Eleventh Circuit opinion, the record reflects that the City itself brought out the existence of the indemnity agreement:

> "Q. And without replowing the same old ground, did that telegram authorize or state that Dollar would indemnify the city for any loss growing out of this particular litigation or any litigation involving the awarding of the bid?
>
> A. Yes, sir.
>
> Q. And did that letter, did that telegram and that letter reflect your understanding insofar as your obligation? When I say "your," I mean Dollar's obligation.
>
> A. Yes, sir.
>
> * * *
>
> Q. And have you ever denied that you sent the telegram and that the purpose of the telegram was to make clear that Dollar would indemnify the city?
>
> A. No.
>
> R. Vol. X, p. 82. [Questions by City; Answers by Dollar's Paxton.]

The Respondent City seeks to avoid discussion of the issues by pretending they do not exist. Although such diversionary tactic may not be unusual, it does little to aid in determining whether or not this Court should hear the case. Because the Questions Presented do involve matters that are of substantial public importance and are inconsistent with holdings this Court and other Courts of Appeals, the Writ of Certiorari should be Granted.

Respectfully,

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